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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,726	10/16/2003	Leonard L. Barr	250p-Barr	4648
7590	10/01/2004		EXAMINER	
Barber Legal P.O. Box 16220 Golden, CO 80402-6004			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/687,726	BARR, LEONARD L.
Examiner	Art Unit	
PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 October 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 16 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/16/2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on October 11, 2003, was filed and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." However, the references (U.S. patents 6,196,600, 6,068,311, and 6,003,913) have been considered.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "square receptacle" (claim 7) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any

portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 1 and 3-5 are objected to because of the following informalities: the phrase "the invention" (claims 3-5, line 1) should be changed to waste pickup device --. Moreover, claim 1 recites "a sanitary waste pickup device", but applicant also claims "a receptacle cup" which is inappropriate. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the phrase "*the first handle, forming a physical unity*" (claim 1, line 18) is not clearly understood as to how the "handle" is formed a physical unity.

Moreover, there is no antecedent basis for "the second stop" (claim 8).

7. Claim 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: "a receptacle cup" and "a waste pick up device" (claim 1).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1,2, and 6-15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (2,738,215) in view of Ross, Jr. et al. (3,779,157) or Robbins, III (4,874,106)

Thompson (2,738,215) discloses a waste pickup device comprising a fixed plate (22,26) having an aperture at the center and a plurality of spikes (23,23), a shuttle plate (40) having a plurality of apertures (29,29) (Fig. 2), a tube (37) connected to a handle (38) movable within a hollow tube (36) enclosing the inner tube and having two slots (39,39) which can be considered as stops for the movable handle (38), and a spring (42) wherein the hollow tube connected to a second handle (40). Thompson's pickup device (2,738,215) does not show a *receptacle* having a lip and at least one détente on the interior surface below the lip.

However, Ross, Jr. et al. (3,779,157) shows a *receptacle* (Fig. 2) having a lip (72) and at least one détente (22,26) on the interior surface below the lip. Robbins, III (4,874,106) also shows a *circular or rectangular shaped receptacle* (Fig. 6) having a lip (34) and at least one détente (32) on the interior surface below the lip and a removable bottom (Col 2, lines 7-16).

Accordingly, it would have been obvious to those skilled in the art to provide a *receptacle* on the Thompson's pickup device (2,738,215) as taught by Ross et al. (3,779,157) or Robbins, III (4,874,106) so that the pickup waste can be disposed in the receptacle. It is

also pointed out that it would have been obvious design choice to provide an *additional spring* (instead of one spring) on the hollow tubes on the modified Thompson (2,738,215) and a seal on the lip or bottom of the receptacle for sealing.

10. Claims 3-5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (2,738,215) and Ross, Jr. et al. (3,779,157) or Robbins, III (4,874,106), as applied to claims 1,2, and 6-15 above, and further in view of Kill (6,634,163).

The modified Thompson's pickup device (2,738,215), as presented in section 9 above, does not show that the device is being *made of metal, plastic, or wood*.

However, Kill (6,634,163) shows a pickup device *being made of metal, plastic, or wood* (see Col 4, lines 39-53). Accordingly, it would have been obvious design choice to those skilled in the art to provide on the Thompson's pickup device (2,738,215) to be made of *metal, plastic, or wood* in order to meet the user's preference.

11. Claims 1,6, and 8-15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klausman et al. (2,695,188) in view of Kehl (4,416,197).

Klausman et al. (2,695,188) discloses a waste pickup device comprising a fixed plate (6,7) having an aperture (17) at the center and a plurality of spikes (8,8), a shuttle plate (12) having a plurality of apertures (16,16) (Fig. 3), a tube (14) connected to a handle (27) movable within a hollow tube (1) enclosing the inner tube and having two slots (28,28) which can be considered as stops for the movable handle, and a spring (18).

Klausman et al. (2,695,188) does not show a *receptacle* having a lip and at least one *détente* on the interior surface below the lip.

However, Kehl (4,416,197) shows a *receptacle* (Fig. 2) having a lip, a plastic bag, and at least one *détente* (101) on the interior surface below the lip, and a seal (31).

Accordingly, it would have been obvious to those skilled in the art to provide a *receptacle* on the Klausman et al. (2,695,188) as taught by Kehl (4,416,197) so that the pickup waste can be disposed in the receptacle. It is also pointed out that it would have been obvious design choice to provide *an additional spring* (instead of one spring) on the hollow tubes on the modified Klausman et al. (2,695,188).

12. Claims 3-5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klausman et al. (2,695,188) and Kehl (4,416,197), as applied to claims 1,6, and 8-15, above, and further in view of Kill (6,634,163).

The modified Klausman et al. (2,695,188), as presented in section 11 above, does not show that the device is being *made of metal, plastic, or wood*.

However, Kill (6,634,163) shows a pickup device *being made of metal, plastic, or wood* (see Col 4, lines 39-53). Accordingly, it would have been obvious design choice to those skilled in the art to provide on the modified Klausman et al. pickup device (2,695,188) to be *made of metal, plastic, or wood* in order to meet the user's preference.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gatch (5,642,911) discloses a litter pickup device. Hastings (4,248,468) shows a handle assembly and a spring.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

Art Unit: 3652

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN
Examiner
Art Unit 3652